United States District Court,
N.D. Texas, Dallas Division.

MINKA LIGHTING, INC,
Plaintiff.
v.
QUORUM INTERNATIONAL, L.P. and Davoil, Inc,
Defendants.

No. 3:04-CV-2186-P

March 6, 2007.

Lisa H. Meyerhoff, Myall S. Hawkins, Tan Pham, Todd Young Brandt, Baker & McKenzie, Houston, TX, for Plaintiff.

Melvin A. Hunn, Kenneth C. Hill, Hill Law Firm, Fort Worth, TX, for Defendants.

ORDER

JORGE A. SOLIS**, District Judge.**

This lawsuit involves, *inter alia,* infringement counterclaims by Defendants Quorum International, Inc. and Davoil, Inc. (hereinafter collectively referred to as "Quorum") against Plaintiff Minka Lighting, Inc. (hereinafter "Minka") for infringement of three design patents: US Patent D346,858 ("the '858 Patent"), U.S. Patent D424,736 ("the '736 Patent"), and U.S. Patent D461,272 ("the '272 Patent"). Now before the Court are the parties' briefs setting forth their proposed claims constructions. FN1 After reviewing the briefing, including the patents, drawings, and any relevant prior art, and the applicable law, the Court determines that a *Markman* hearing is not necessary and adopts the claims construction set forth below.

FN1. Quorum filed a claims construction brief on January 29, 2007. Minka filed its claims construction brief in response on February 9, 2007. Quorum filed a reply brief on February 16, 2007. On February 28, 2007, Minka filed an unopposed motion for leave to file a sur-reply. Because the motion is unopposed, the Court GRANTS Minka's motion for leave to file a sur-reply. The Court deems the sur-reply attached to Minka's motion for leave as Exhibit A filed as of the date of this Order and considers the merits of the sur-reply when making its determination.

I. Claims Construction

Analysis of a patent infringement claim is a two-step process, the first step being the trial court's determination of the meaning and scope of the claims asserted. Markman v. Westview Instruments, Inc., 52 F.3d 967, 983-84 (Fed.Cir.1995). The trial court construes the claim "through its own eyes, and need not

refer to an ordinary observer or a skilled artisan." Minka Lighting, Inc. v. Pan Air Elec. Co., 93 Fed. Appx. 214, 216 (Fed.Cir.2004) (unpub.). In short, the court "may 'translate visual descriptions into words.' " *Id.* (quoting Durling v. Spectrum Furniture Co., 101 F.3d 100, 103 (Fed.Cir.1996). "When properly done, this verbal description should evoke the visual image of the design." Durling, 101 F.3d at 103 n. 2.

The focus a design patent claim is on the overall visual appearance of the novel, ornamental features, rather than the design concepts. Id. at 104; *see also Lamps Plus, Inc. v. Dolan,* No. 3:01-CV-1537-K, 2003 U.S. Dist. LEXIS 19578, at *9-10 (N.D.Tex. Nov. 3, 2003) (citing OddzOn Prods., Inc. v. Just Toys, Inc., 122 F.3d 1396, 1405 (Fed.Cir.1997); Durling, 101 F.3d at 104)). In other words, a design patent protects what is ornamental, not what is functional. *Lamps Plus, Inc.,* 2003 U.S. Dist. LEXIS 19578, at *9-10 (citing Elmer v. ICC Fabricating, Inc., 67 F.3d 1571, 1577 (Fed.Cir.1995); KeyStone Retaining Wall Sys., Inc. v. Westrock, Inc., 997 F.2d 1444, 1450 (Fed.Cir.1993)). Thus, the claim construction must accurately describe the ornamental features in a manner that evokes a visual image which aids the jury in comparing the design patent with the accused product. *Lamps Plus, Inc.,* 2003 U.S. Dist. LEXIS 19578, at * 13 (citing *Minka Lighting, Inc.,* 2001 U.S. Dist. LEXIS 14199, at *19). The novelty of a design is found in the non-functional features that set it apart from prior art. *Lamps Plus, Inc.,* 2003 U.S. Dist. LEXIS 19578, at (citing *Minka Lighting, Inc. v. Craftmade Int'l, Inc.,* No. 3:00-CV-0888-X, 2001 U.S. Dist. LEXIS 14199, at (N.D.Tex. Aug.20, 2001)).

A. US PATENT D 346,858

The Court construes the '858 Patent design claim as follows:

The '858 Patent is directed to an ornamental design for a combined ceiling fan and light. The design may be described by referring to the three standard structural components of the ceiling fan: the housing, the fan blades, and the light dome.

The housing is symmetrical and in the shape of a slightly flattened sphere; that is, the housing is not a perfect three-dimensional circle, but rather has a wider diameter from east to west than from north to south. The housing consists of an upper, middle, and lower section. The light dome is smooth and shaped like a saucer. The lower section of the housing is integrated with the light dome, as if the light dome were affixed to the bottom of the lower section to form one continuous surface. The upper section and the lower section, including the light dome, appear to have the same shape and size. FN2 The middle section sits between the upper section and the lower section and is in the shape of a band or ring extending around the widest perimeter of the housing.

FN2. The parties argue whether the upper and lower sections of the housing are the same shape and size or *approximately* the same shape and size. The Court finds that, by viewing only the drawings, it is impossible to determine whether or not the upper and lower sections are exactly identical in shape and size. However, the upper and lower sections appear to the naked eye to be the same shape and size. Additionally, both parties refer to the housing as "symmetrical," which implies that the upper and lower sections have the same dimensions. Accordingly, without stating that the upper and lower sections are, in fact, identical, the Court finds that they appear to be the same shape and size, and therefore adopts this wording.

A cap, used to connect the housing and the support rod, is located on top of the peak of the upper section of the housing and is substantially smaller than this upper section. This cap has a circular top and bottom, the

top being slightly smaller than the bottom, which are connected by continuous concave sides.

Four evenly-spaced fan blades protrude from the middle section of the housing at a slight angle. The fan blades are roughly rectangular in shape when viewed from below the ceiling fan, and slightly tapered as you move from the point which they are connected to the middle section towards the end of the blade. The end of each blade is squared. The surface of each blade is smooth.

B. US PATENT D 424,736

The Court construes the '736 Patent design claim as follows:

The '736 Patent is directed to an ornamental design for a lower cage for a lighting fixture. The cage is roughly bowl-shaped. A circular band, the surface of which is solid, extends around the rim of the cage and is wider than it is thick, similar to a belt. Six flat ribs, also wider than they are thick, are equally spaced around and extend from the band. The ribs curve inwardly toward the center point of what would be the base of the bowl where the six ribs meet. Each rib tapers in width from the point it is attached to the rim to the point it meets in the center. Each rib tapers to about one-half its greatest width near the center point where the ribs meet. At the center point is a circular plate with a central hole. Each of the six ribs meets the circular plate and, if viewed from above as if looking into the bowl-shaped cage, the end of each rib attaches on top of the circular plate. Viewed from underneath the cage, the ribs appear be equally spaced and affixed to the top of the circular plate, extending radially towards the rim.

C. US PATENT D 470,266

The Court construes the '266 Patent design claim as follows:

The '266 Patent is directed to an ornamental design for a light cover having a faux alabaster appearance. The light cover is a circular, shallow dome. The dome tapers down towards the base, making the opening at the base of the dome smaller than the widest point on the dome. At the very base of the dome the tapered opening flares outwardly to create a bottom lip. The surface of the dome is translucent glass, with several irregular swirls formed by sweeping and intersecting lines.FN3 The swirls are more opaque than the intervening regions, creating an appearance similar to alabaster.

FN3. The parties dispute over the appropriate language to describe the lines that create the faux alabaster appearance of the light cover. Minka asserts that Quorum represented to the Patent Office that the invention related to "distinct" swirl lines, and therefore the swirl lines must be described as a "substantially repeating specific swirl pattern." Quorum, however, asserts that there is nothing substantially repeating or patterned about the swirls, and instead describes the lines as "irregular swirls." Quorum further maintains that, when arguing to the Patent Office that the swirl lines are "distinct," Quorum was referring to the fact that the swirls are more opaque than the intervening regions, and, therefore, distinct on the translucent glass. The Court agrees with Quorum. After reviewing the opinion of the U.S. Patent and Trademark Office and the related drawings, *see* Pl.'s App. at 34-36, Def.'s App. to Reply at 1-3, the Court finds that a specific pattern of lines was not what the Patent Office found distinct in the three submitted designs. The three original drawings submitted with the patent application reveal three different embodiments with very different swirl patterns. (*See* Def.'s App. to Reply at 1-3.) However, the Patent Office did not comment on these swirl lines as something that makes the three embodiments different from each other. Rather, the Examiner stated that the difference in the shape of the globes creates the distinction and need for separate patents. (Pl.'s App. at 34.) Additionally, the claim itself does not address a specific swirl pattern, but refers generally to a faux

alabaster appearance. Accordingly, the Court will not now adopt a claims construction that narrows the scope of the '266 Patent to a "substantially repeating specific swirl pattern" when, as Quorum notes, there seems to be nothing specific or substantially repeating about the swirl design; instead, the swirl lines are irregular and represent the faux alabaster appearance of the light cover as a whole. Thus, the Court adopts the claims construction set forth above.

II. Conclusion

The Court adopts the claims construction set forth above with regard to Patents D346,858, D424,736, and D470,266.

It is so ordered.

N.D.Tex.,2007.
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